

**Panhandle Telecasting Company d/b/a KFDA-TV Channel 10 and International Brotherhood of Teamsters, Local Union 577, AFL-CIO, Petitioner. Case 16-RC-9435**

August 31, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held October 17, 1991, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 14 for and 9 against the Petitioner, with 12 challenged ballots.

The Board has reviewed the record in light of the exceptions and brief and has adopted the hearing officer's rulings,<sup>1</sup> findings<sup>2</sup> and recommendations,<sup>3</sup> and overrules the challenges to the ballots of seven hourly news department employees classified as reporters and reporter/anchors.

The parties stipulated to the following unit:

**INCLUDED:** All regular full-time and part-time production employees, to include video tape operators, switchers and control operators, character generator operators, audio operators, studio camera operators, commercial copy writers and producers, engineers, traffic employees, and photographers employed by the Employer at the Amarillo, Texas, facility located at Broadway and Cherry.

**EXCLUDED:** All other employees, to include all salaried employees, all sales employees, contract janitors and guards, and all supervisors as defined in the Act.

Although the Employer's administrative structure includes a "production department," it is clear from the record, and no one argues otherwise, that the phrase "production employees" as used in the stipulation is not confined to employees from that department. All parties agree that included in the unit are hourly employees from the engineering department, and the pho-

tographers and producers in the news department. The parties do not agree, however, as to the placement of the reporters and reporter/anchors at issue.

The Petitioner argues that the news reporters and reporter/anchors qualify as production employees and should be included in the unit. The Employer contends that the challenged employees are functionally separate from the employees in the unit and do not share a community of interest with them. The hearing officer, noting, *inter alia*, that the news reporters and reporter/anchors often work side by side with unit employees and receive comparable pay and the same benefits, found that they share "a sufficient functional relationship" (and by implication a community of interest) with the employees in the unit. Accordingly, she recommended that the challenges to their ballots be overruled.

We agree with the hearing officer that the reporters and reporter/anchors at issue share a close functional relationship, and community of interest, with the employees stipulated to be in the unit, and are thus properly included in the unit. For example, the reporters and reporter/anchors regularly photograph their own news stories.<sup>4</sup> The record also discloses that the reporters and reporter/anchors regularly act as news producers on the weekends, regularly run the video tape during newscasts, and regularly operate the teleprompter. News photographers, news producers, and videotape operators are all included in the stipulated unit. These facts, which show that reporters and reporter/anchors regularly perform work performed by unit employees, demonstrate (along with those cited by the hearing officer) that the employees at issue are appropriately included in the unit.

The Employer points out that the major distinction between the unit employees and the reporters and reporter/anchors is that the stipulated employees all work "behind-the-scenes," whereas the reporters and reporter/anchors appear on-air. As on-air employees, according to the Employer, they are held to a higher standard of professionalism<sup>5</sup> than the other employees. Although these factors could support a conclusion that a separate unit limited to the reporters and reporter/anchors is also appropriate, the appropriateness of such a unit is not before us. The differences cited by the Employer are insufficient, under the facts presented here, to *compel* a finding that the inclusion of the reporters and reporter/anchors in the requested unit is inappropriate.

<sup>1</sup> We find it unnecessary to rule on the Employer's motion to the hearing officer summarily to sustain its challenges to the seven reporters and reporter/anchors as that motion has not been renewed on exceptions.

<sup>2</sup> The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

<sup>3</sup> Prior to the hearing, the parties stipulated that 5 of the 12 challenged ballots should be sustained.

<sup>4</sup> Reporter Brice Sheets testified that he does nearly all the photography for his stories because there are not enough photographers scheduled during the week and none on weekends.

<sup>5</sup> The Employer has not argued that the reporters and reporter/anchors at issue are "professional employees" as defined in the Act; thus, we find it unnecessary to rely on *Binghamton Press Co.*, 226 NLRB 808 (1976).

Neither *Perry Broadcasting*, 300 NLRB 1140 (1990), nor any of the cases cited by the Employer<sup>6</sup> are an impediment to our decision to include these reporters and reporter/anchors in the petitioned-for unit. The fact that the Board has found separate units of on-air employees appropriate in the past is not determinative here. Nothing in the case law says that it is inappropriate to include on-air employees in a broader unit where, as here, they share a community of interest with the other employees. Simply put, while the cases cited by the Employer *permit* separate units, they do not *prohibit* inclusion of on-air and other employees in

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<sup>6</sup>*Pulitzer Publishing Co.*, 203 NLRB 639, 641 (1973); *KPOJ, Inc.*, 129 NLRB 727, 729 (1960); *Hampton Roads Broadcasting Corp.*, 100 NLRB 238, 239 (1952); *Norfolk Broadcasting Corp.*, 100 NLRB 244, 245 (1952); *WTAR Radio Corp.*, 100 NLRB 250, 251 (1952).

one unit when other community-of-interest criteria are met.

Accordingly, we find that the seven hourly reporters and reporter/anchors in dispute are properly included in the unit and overrule the challenges to their ballots.

#### ORDER

IT IS ORDERED that the challenges to the ballots of Brice Sheets, John Hagerty, Chris Hernandez, Kirk Welch, Tonya Haywood, Kari King, and Matt Wursler be overruled and that their ballots be opened and counted, and that based on the revised tally the appropriate certification be issued.

IT IS FURTHER ORDERED that this matter is remanded to the Regional Director for further action consistent with this Decision and Order.